

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2292 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

BALDEVBHAI PURSHOTTAMBHAI CHAVDA

Versus

COMMISSIONER OF POLICE

Appearance:

MR ADIL MEHTA for Petitioner

MR JOSHI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 30/11/1999

ORAL JUDGEMENT

#. The petitioner is a detenu under the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA Act" for short), who has been detained by the Commissioner of Police, Ahmedabad, by virtue of an order passed by him on 3rd March, 1999, in exercise of powers under Section 3(1) of the PASA Act.

#. The detaining authority has considered five

offences registered against the detenu in grounds of detention. The authority has also considered the statements of two witnesses involving the detenu in activity of bootlegging for which no offences are registered. The detaining authority recorded a subjective satisfaction for exercising powers under Section 9(2) of the PASA Act by claiming privilege. It also recorded that other less drastic steps under other provisions cannot be resorted to as the detenu has continued his activities and detention under PASA Act is the only remedy.

#. The detenu has preferred this petition under Article 226 of the Constitution assailing the detention on various grounds.

3.1 One of the grounds is that the order in question is passed mechanically without application of mind. The last offence registered was on 1st March, 1999. The statements of witnesses were recorded on 2nd March, 1999. The statements were verified by the detaining authority on 3rd March, 1999 and, on that very day, the order of detention came to be passed and, therefore, in absence of any material to show that the detaining authority has independently satisfied itself subjectively for passing the order of detention and for exercise of privilege under Section 9(2) of the PASA Act, the order in question is bad.

#. Mr. Adil Mehta, learned advocate appearing for the petitioner has restricted his argument to the above point and submitted that there is non-application of mind by the detaining authority. There was no sufficient time for the detaining authority to ascertain from independent sources the correctness and genuineness of the facts stated by the witnesses and the exercise of privilege under Section 9(2) is, therefore, without application of mind and the order of detention, therefore, may be set aside and the detenu may be ordered to be released.

#. Mr. Joshi, learned Assistant Government Pleader, has drawn attention to the affidavit in reply filed by the detaining authority. He submitted that, in light of what is contended in paragraph 8, the detaining authority has stated that it has verified personally the genuineness, correctness and veracity of the incidents narrated in the statements of witnesses in respect of the unregistered offences and that the authority was satisfied that the fear expressed by the witness was quite proper, real and genuine and, therefore, the privilege was claimed.

#. Undisputedly, the last offence that is registered against the petitioner is dated 1st March, 1999. Admittedly, the statements of witnesses were recorded on 2nd March, 1999 and the same came to be verified by the detaining authority on 3rd March, 1999. This Court is not able to appreciate as to how the detaining authority could have ascertained the truthfulness and veracity of the fear expressed by the witnesses when the statements were verified on 3rd March, 1999 itself. There was no sufficient time for the detaining authority to subjectively satisfy itself about the correctness and genuineness of the fear expressed by the witnesses. In fact, the earliest the authority could have received the proposal for detention could be 2nd March, 1999 and the order came to be passed on 3rd March, 1999. The statements were verified on 3rd March, 1999. What else was done to record the said subjective satisfaction is not stated in the affidavit by the detaining authority and, therefore, as there was no sufficient time lag which could have possibilised the satisfaction ascertained by the detaining authority and the exercise of privilege under Section 9(2) of the PASA Act is vitiated. In this regard, decision in the case of Kalidas C. Kahar v. State of Gujarat, 1993(2) GLR 1659 in can be profitably referred to.

#. In the above view of the matter, the petition deserves to be allowed and is hereby allowed. The order of detention dated 3rd March, 1999, passed in respect of the petitioner-Baldevbhai Purshottambhai Chavda, is hereby quashed and set aside. The petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L. DAVE, J.]

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